

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES FINLEY,

Defendant.

8:21CR7

ORDER

This matter is before the Court on defendant James Finley’s (“Finley”) *pro se* motion under 28 U.S.C. § 2255 (Filing No. 159) to vacate his conviction and set aside his sentence. Finley seeks relief on the grounds that his trial counsel, Stuart Dornan (“Dornan”), allegedly “failed to file a direct appeal” after being requested to do so and “failed to investigate” the facts of his case. On its initial review of his motion, the Court ordered the government to respond to these claims (Filing No. 162). *See* Rules Governing Section 2255 Proceedings for the United States District Courts, Rule 4(b) (requiring the Court to order the government to respond to a § 2255 motion unless “it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief”).

The government has now responded (Filing No. 166) and concedes that an evidentiary hearing is required to assess Finley’s claim that Dornan did not file the purportedly requested appeal. *See* 28 U.S.C. § 2255(b) (requiring the district court to promptly grant a hearing “[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief”); *United States v. Sellner*, 773 F.3d 927, 930 (8th Cir. 2014) (deciding a § 2255 petitioner was entitled to an evidentiary hearing on such a claim because it required the district court to make a credibility determination).

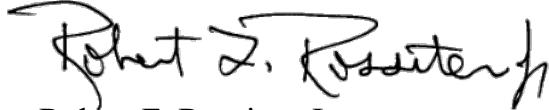
Given the need for a hearing and Finley's circumstances, the Court will appoint counsel to represent him in this matter under 18 U.S.C. § 3006A and Rule 8 of the Rules Governing Section 2255 Proceedings for the United States District Courts.

IT IS ORDERED:

1. An evidentiary hearing on defendant James Finley's 28 U.S.C. § 2255 Motion is set for February 7, 2024, at 1:30 p.m. in Courtroom No. 4, Roman L. Hruska Federal Courthouse, 111 S. 18th Plaza, Omaha, Nebraska 68102.
2. Finley's Motion to Appoint Counsel (Filing No. 167) is granted.
3. The Federal Public Defender for the District of Nebraska is appointed to represent Finley at the hearing. If the Federal Public Defender accepts this appointment, the Federal Public Defender shall promptly file an appearance in this matter. In the event the Federal Public Defender should decline this appointment for reason of conflict or based on the Criminal Justice Act Plan, the Federal Public Defender shall promptly provide the Court with a draft appointment order (CJA Form 20) bearing the name and other identifying information of the CJA Panel attorney identified in accordance with the Criminal Justice Act Plan for this district.
4. The Clerk of Court shall provide a copy of this order to the Federal Public Defender.
5. The Court will arrange for Finley to participate by telephone. Counsel and Dornan will personally appear.
6. The parties may call other witnesses and present other relevant evidence at the hearing.

Dated this 20th day of December 2023.

BY THE COURT:



Robert F. Rossiter, Jr.
Chief United States District Judge